Remarks

Applicants have carefully reviewed this Application in light of the Office Action sent 23 July 2008. To expedite issuance of a patent from this Application, Applicants have made clarifying amendments to Claims 1-2, 4-6, 8-14, and 16-45. Applicants respectfully request the Examiner to reconsider and allow all pending claims.

The Limitations of Claims 1-45 Have Proper Antecedent Basis
Under 35 U.S.C. § 112

The Examiner rejects Claims 1-45 as being indefinite. Specifically, the Examiner states, "Claims 1, 16, and 31 recites the limitation 'the reset node'. There is insufficient antecedent basis for this limitation in the claim." Although Applicants do not necessarily agree with the Examiner, to expedite issuance of a patent from this Application, Applicants have made clarifying amendments to independent Claims 1, 16, and 31. Applicants respectfully request the Examiner to reconsider and allow independent Claims 1, 16, and 31 and all their dependent claims.

Claims 16-45 Recite Patentable Subject Matter

The Examiner rejects Claims 16-30 as being directed to nonstatutory subject matter. Specifically, the Examiner states, "Claims 16-30 recites software for computer cluster virtualization operable to select distributed application... Claims are directed to software and therefore, claims 16-30 lack the necessary physical articles or objects to constitute a machine or manufacture within the meaning of 35 USC 101." Although Applicants do not necessarily agree with the Examiner, to expedite issuance of a patent from this Application, Applicants have made clarifying amendments to Claims 16-30. Applicants respectfully request the Examiner to reconsider and allow Claims 16-30.

The Examiner rejects Claims 31-45 as being directed to nonstatutory subject matter. Specifically, the Examiner states, "Claims 16-30 recites software for computer cluster The

Examiner further states, "Similarly, claims 31-45 recite a computer system claims of software claims 16-30 and therefore, claims 31-45 also lack the necessary physical articles or objects to constitute a machine or manufacture within the meaning of 35 USC 101." Applicants respectfully disagree with the Examiner. Independent Claim 31 recites *a system* that comprises *a plurality of computing nodes* and *a management node*. Applicants respectfully submit that *a system* comprising *a plurality of computing nodes* and *a management node*, as independent Claim 31 recites, at least "the necessary physical articles or objects to constitute a machine or manufacture" under 35 U.S.C. § 101. Applicants respectfully request the Examiner to reconsider and allow independent Claim 31 and all its dependent claims.

Independent Claims 1, 16, and 31 are Allowable Over
the Proposed *Brownell-Aziz* Combination

The Examiner rejects independent Claims 1, 16, and 31 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 7,231,430 to Brownell et al. ("*Brownell*") and U.S. Patent No. 6,597,956 to Aziz ("*Aziz*"). Applicants respectfully disagree with the Examiner.

Independent Claim 1 of this Application, as amended, recites:
> A method comprising:
> selecting a distributed application;
> retrieving a policy associated with the distributed application;
> dynamically selecting one of a plurality of nodes;
> resetting a boot image of the selected node based at least in part on the retrieved policy, the boot image being compatible with the distributed application;
> associating a virtual disk image with the selected node based at least in part on the retrieved policy; and
> executing at least a portion of the distributed application on the selected node, as reset, using the virtual disk image associated with the selected node.

Independent Claims 16 and 31 recite limitations similar to those in independent Claim 1.

Applicants respectfully submit that the proposed *Brownell-Aziz* combination fails to disclose, teach, or suggest all the limitations of independent Claim 1. As an example, the proposed *Brownell-Aziz* combination fails to disclose, teach, or suggest ***dynamically selecting one of a plurality of nodes***, as independent Claim 1 recites. As another example, the proposed *Brownell-Aziz* combination fails to disclose, teach, or suggest ***resetting a boot image of the selected node based at least in part on the retrieved policy, the boot image being compatible with the distributed application***, as independent Claim 1 recites. As yet another example, the proposed *Brownell-Aziz* combination fails to disclose, teach, or suggest ***associating a virtual disk image with the selected node based at least in part on the retrieved policy***, as independent Claim 1 recites.

The Examiner asserts that *Brownell* discloses ***dynamically selecting one of a plurality of nodes***, as independent Claim 1 recites, ***resetting a boot image of the selected node***, as independent Claim 1 further recites, and ***associating a virtual disk image with the selected node***, as independent Claim 1 further recites. Applicants respectfully disagree with the Examiner. *Brownell* merely discloses a hardware platform that includes processing nodes connected to a switching fabric via a high-speed interconnect. (Column 2, Lines 56-67). Each processing node is a board that includes processors, network interface cards, and local memory that includes some BIOS firmware for booting and initialization. (Column 3, Lines 13-17). Control nodes connected to the switch fabric are each a single board that includes processors, local memory and local disk storage for holding independent copies of the boot image and initial file system that is used to boot OS software for the processing nodes and the control nodes. (Column 3, Lines 21-26). Even assuming for the sake of argument that the independent copies of the boot image and initial file system in *Brownell* could properly be considered ***a boot image of the selected node***, as independent Claim 1 recites, *Brownell* would still fail to disclose, teach, or suggest ***dynamically selecting one of a plurality of nodes*** and then ***resetting a boot image of the selected node***, as independent Claim 1 recites, with the independent copies of the boot image and initial file system in *Brownell*. Moreover, Brownell provides no disclosure, teaching, or suggestion whatsoever of ***associating a virtual disk image with the selected node***.

Aziz does not make up for these deficiencies of *Brownell*, and the Examiner does not assert otherwise.

The Examiner acknowledges, "Brownell is silent about policy associated with the distributed application." However, the Examiner asserts that *Aziz* makes up for this further deficiency of *Brownell*. Applicants respectfully disagree with the Examiner. *Aziz* merely discloses a policy-based rule for adding a Web server to a virtual server farm (VSF) and enforcing firewalling between VSFs according to policy rules. (Column 11, Lines 7-15; Column 21, Lines 9-17). Even assuming for the sake of argument that the policy-based rule or the policy rules in *Aziz* could properly be considered **a policy**, as independent Claim 1 recites, *Aziz* would still fail to disclose, teach, or suggest the policy-based rule or the policy rules in *Aziz* being in any way **associated with the distributed application**, as independent Claim 1 recites. Moreover, *Aziz* would still fail to disclose, teach, or suggest using the policy-based rule or the policy rules in *Aziz* for anything other than adding a Web server to a VSF or enforcing firewalling between VSFs, much less **resetting a boot image of the selected node based at least in part on** the policy-based rule or the policy rules in *Aziz*, as independent Claim 1 recites, or **associating a virtual disk image with the selected node based at least in part on** the policy-based rule or the policy rules in *Aziz*, as independent Claim 1 further recites.

The Examiner may not disregard specific recitations of Applicants' claims to maintain a rejection under 35 U.S.C. § 103(a). According to the M.P.E.P., "[a]ll words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. ch. 2143.03 (Rev. 6, Sep. 2007) (emphasis added). Moreover, "[w]hen evaluating claims for obviousness under 35 U.S.C. 103, all the limitations of the claims must be considered and given weight." *Id.* As shown above, even assuming for the sake of argument the proposed *Brownell-Aziz* combination were proper, the proposed *Brownell-Aziz* combination would still fail to disclose, teach, or suggest all the limitations of independent Claim 1. Therefore, the proposed *Brownell-Aziz* combination does not render independent Claim 1 obvious.

For at least these reasons, Applicants respectfully request the Examiner to reconsider and allow independent Claims 1, 16, and 31 and all their dependent claims.

Conclusion

For at least the foregoing reasons, Applicants respectfully request allowance of all pending claims.

If a telephone conference would advance prosecution of this Application, the Examiner may call Travis W. Thomas, Attorney for Applicants, at 650.739.7503.

The Commissioner may charge $1,110.00 for a three-month extension of time to Deposit Account No. 02-0384 of Baker Botts LLP. The Commissioner may charge any fee due and credit any overpayment to Deposit Account No. 02-0384 of Baker Botts LLP.

Respectfully submitted,

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Attorneys for Applicants
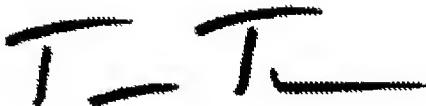
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Date: 23 January 2009

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